

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6424

DWIGHT WILLIAM ANTY,

Petitioner - Appellant,

versus

COLIE L. RUSHTON, Warden; HENRY DARGAN
MCMASTER,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Anderson. Terry L. Wooten, District Judge.
(CA-03-1540-8-25BI)

Submitted: November 4, 2004

Decided: November 9, 2004

Before WILKINSON, MOTZ, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Dwight William Anty, Appellant Pro Se. Donald John Zelenka, Chief
Deputy Attorney General, William Edgar Salter, III, OFFICE OF THE
ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for
Appellees.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Dwight William Anty seeks to appeal the district court's order adopting the report and recommendation of the magistrate judge and denying relief on his petition under 28 U.S.C. § 2254 (2000). We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on January 22, 2004. The notice of appeal was filed on February 26, 2004.* Because Anty failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny his motion for a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately

*For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. See Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

presented in the materials before the court and argument would not aid the decisional process.

DISMISSED